IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1150 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RITABEN M GAJJAR

Versus

STATE OF GUJARAT

Appearance:

MR MC BAROT for Petitioner

MR SB SHAH for Respondent No. 1

MR FB BRAHMBHATT for Respondent No. 2

Mr. I.M. Pandya AGP for Respondent No. 3, 4

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 06/10/2000

ORAL JUDGEMENT

Learned advocate Mr. Barot is appearing for the petitioner. Learned advocate Mr. F.B.Brahmbhatt is

appearing for respondent No.2. Learned AGP Mr. Pandya is appearing for respondents no. 3 and 4.

In this petition, rule issued by this court on 24th September, 2000 was made returnable on 10th October, 2000. However, the office has notified the present petition today i.e. 6th October, 2000 and, therefore, the matter has been heard for final disposal today.

The facts of the present petition, in brief, are that the petitioner purchased agricultural land bearing S.Nos. 16/1, S.No. 16/6 and S.No. 16/7 of Block No. 39 of village Amli, Taluka Daskroi, District and Sub District of Ahmedabad by registered sale deed dated 27.3.1989. Pursuant to the said sale deed dated 27.3.1989, necessary entries were made in the revenue record namely village form no. 6 being mutation entry no. 1805 which came to be certified by order dated 28.12.1989. Thereafter, for the alleged breach of sec. 63 of the Bombay Tenancy and Agricultural Lands Act,1948, in suo motu exercise of the powers under section 84-C of the Act, a show cause notice dated 8.7.1993 was received by the petitioner from the Mamlatdar and A.L.T., Daskroi, Ahmedabad who, under his order dated 7.8.1993, held that there was no breach of sec. 63 of the Tenancy Act and withdraw the show cause notice dated 8.7.1993 by order dated 7.8.1993. Thereafter, the Dy. Collector, L.R. suo motu taken the said case No. 109 of 1993 in revision under section 76(A) of the Tenancy Act being Tenancy Case NO. 530 of 1993 and notice dated 11.9.1996 came to be issued for the hearing. Thereafter, in pursuance to the notice, lastly on 20.3.1998, advocate for the petitioner appeared before the Deputy Collector, L.R. Mr. Modi and the matter was heard before him. Inspite of the advocate for the petitioner was heard by Mr. Modi and during that period, the petitioner was keenly awaiting for the judgment to be delivered by the Dy. Collector, L.R. there was no communication from the office of the Dy. Collector, L.R. and the petitioner and her advocate were eagerly waiting and made enquiry in the month of June,1998 and July, 1998 and continued to make enquiries time and again and the clerk of the office of the Dy. Collector informed the petitioner and her advocate that yet some time would take for hearing as Mr. Modi, the then Deputy Collector has retired. Thereafter, the petitioner was informed and intimated by the Talati cum Mantri, Village Amli that the matter has already been heard and disposed by Shri Solanki, Deputy Collector, L.R. on 27.7.1998. Said order dated 27.7.1998 passed by the Dy. COllector,L.R. was challenged by the petitioner before the Gujarat Revenue Tribunal by filing Tenancy

Revision Application No. Ten.BA.353.1998. In the said revision, the tribunal remanded the matter back to the Mamlatdar to decide afresh with certain directions. The tribunal modified the order and directed the Mamlatdar to inquire as to whether the petitioner was agriculturist and held other agricultural land within the prescribed limit of 8 km. According to the petitioner, the petitioner is basically an agriculturist and she has been held as such by the Mamlatdar and ALT after verifying the proper evidence. Feeling aggrieved by the order of the Tribunal in remanding the matter back to the Mamlatdar, the petitioner has approached this Court with a prayer to quash and set aside the orders passed by the Tribunal dated 12.1.2000 Annexure "D" to the petition. Alternatively, the petitioner has prayed for directing the respondents to drop the proceedings under sec. 84-C of the Tenancy Act in respect of the land in question.

Learned advocate Mr. Barot appearing for the petitioner has submitted that before the tribunal, specific contention has been raised about the reasonableness the exercise of suo motu powers under sec. 84-C of the Tenancy Act; that the suo motu powers under section. 84-C were exercised by the Mamlatdar after the period of about four years and, thereafter, suo motu powers were exercised by the Dy. Collector,LR after the period of about three years from the date of the order of the Mamlatdar and, therefore, there was unreasonable and inordinate delay in exercise of such powers and on the ground of unreasonable and inordinate delay alone in exercise of suo motu powers by the Deputy Collector in taking into revision the order passed by the Mamlatdar in initiating 84-C proceedings after the period of about four years, the tribunal ought to have allowed the revision instead of remanding the matter back to the Mamlatdar for inquiry a fresh. He has further submitted that the decision of the Hon'ble Supreme Court in case of Mohd. Kavi Mohd. Amin versus Fatmabai Ibrahim reported in (1997) 6 Supreme Court Cases 71 was cited before the tribunal but the tribunal has not considered the said decision cited by the petitioner and has partly allowed the revision application with a direction to the Mamlatdar to inquire fresh in the said matter after giving opportunity to the respective parties. According to Mr. Barot, such order of remand, in view of the unreasonable and inordinate delay in initiation of proceedings as well as the law laid down by the apex court in case of Mohd. Kavi Mohd. Amin (supra), is erroneous and bad in law and not sustainable.

On the other hand, learned AGP Mr. Pandya has

submitted that the remand order passed by the tribunal is quite just and proper order for making investigation as to whether the petitioner was agriculturist within the meaning of sec. 2 of the Tenancy Act or not. He has further submitted that in remanding the matter to the Mamlatdar, the tribunal has caused no injustice to the petitioner because the petitioner can raise the contention about delay before the Mamlatdar as well. In view of such submissions, learned AGP Mr. Pandya has submitted that this petition is required to be dismissed. He has further submitted that there is no error apparent on the face of the record and, therefore, this Court should not interfere with the order passed by the tribunal while exercising the powers under Article 226 and/or 227 of the Constitution of India. According to him, while exercising the powers under Article 226 and/or 227 of the Constitution, this Court cannot act as a Court of appeal over the orders passed by the tribunal and, therefore, this petition should be dismissed.

Learned advocate Mr. Brahmbhatt appearing for the second respondent has submitted that the view taken by the tribunal is quite just and proper and still the petitioner is having an opportunity to make submissions before the tribunal and, therefore, this court should not interfere with the orders passed by the tribunal.

I have heard the learned advocates for the parties. I have also perused the order dated 7.8.1993 passed by the Mamlatdar as well as the order passed by the Deputy Collector and then, the order dated 12.1.2000 passed by the Tribunal while remanding the matter.

In order dated 7th August, 1993,the Mamlatdar has considered in detail revenue records produced by the petitioner and has come to the conclusion that the husband of the petitioner is having agricultural lands in his own name jointly with his family and even the petitioner and their minor son also are having agricultural lands in their respective names. Not only that but at the time when the land was purchased by the petitioner, the petitioner was agriculturist and that fact was verified by the authority and thereafter only, necessary entry was certified by the authority. The Mamlatdar has considered in great detail the distance between the land purchased and the land already held by the petitioner and the distance between the land newly purchased and the land already held by the petitioner was found to be three km. in between by the Mamlatdar and, therefore, there is no breach of limit of 8 km in the case of the petitioner. There is also clear finding of

the Mamlatdar that in view of this documentary evidence, there is no breach of section 63 and, therefore, the Mamlatdar has ordered to withdraw the show cause notice which was issued to the petitioner under section 84-C of the Tenancy Act with a clear conclusion that the petitioner is an agriculturist under sec. 2(2) and 2(6) of the Act. Said order was challenged by the respondent in revision and the Dy. Collector set aside the order passed by the Mamlatdar and remanded back the matter to the Mamlatdar by order dated 27th July, 1998. Thereafter, the order of the deputy collector has been challenged by the petitioner before the tribunal wherein also remand order has been passed by the tribunal against which the present petition has been filed before this court and the petitioner is, thus, before this court.

Having considered the merits of the matter as well as the orders passed by the revenue authorities namely the Mamlatdar, Dy. COllector and then the Tribunal, as per my view, the order passed by the Mamlatdar is quite clear, proper and valid order based on true and correct appreciation of the evidence on record. The order passed by the Mamlatdar is based on documentary evidence wherein he has given findings of fact in an inquiry under section 84-C of the Act wherein the petitioner has been held to be the tenant under sec. 2(2) and 2(6) of the Act and, therefore, order passed by the Mamlatdar is required to be restored while quashing and setting aside the order passed by the Deputy Collector and the tribunal because both the authorities have not taken into consideration the evidence which was produced before the Mamlatdar and which was appreciated by the Mamlatdar and the said orders are based on no reasons.

There is yet another ground for setting aside the orders passed by the deputy collector and the tribunal. Considering the decision in case of Mohd. Kavi Mohd. Amin (supra), on the ground of delay in initiating the proceedings itself, the orders in question are required to be quashed and set aside. In aforesaid decision, the apex court has in terms held that the suo motu inquiry under section 84-C of the Tenancy Act should be initiated within reasonable period. In the said decision, sale of land had taken place in December, 1972 and the suo motu inquiry started in September, 1973. In the facts of the said decision, it was held by the apex court that such delay was unreasonable delay. In para 2 of the said decision, it has been held by the apex court as under:

"2. Although Mr. Bhasme, learned counsel

> appearing for the appellant took a stand that under section 63 of the Act aforesaid, there should not be any discrimination amongst the agriculturists with reference to the State to which such agriculturists belongs.But according to him, even without going into that question, the impugned order can be set aside on the ground that suo motu power has not been exercised within a reasonable time. Section 84-C of the Act does not prescribe any time for initiation of the proceeding. But in view of the settled position by several judgments of this court that wherever a power is vested in a statutory authority without prescribing any time limit, such power should be exercised within a reasonable time. In the present case, the transfer took place as early as in the year 1972 and suo motu inquiry was started by the Mamlatdar in September, 1973. If sale deeds are declared to be invalid the appellant is likely to suffer irreparable injury, because he has made investments after the aforesaid purchase. In this connection, on behalf of the appellant, reliance was placed on a judgment of Justice S.B.Majmudar (as he then was in the High Court of Gujarat) in State of Gujarat v.Jethamal Bhagwandas Shah, disposed of on 1.3.1990 where in connection with section 84-C itself, it was said that the power under the aforesaid section should be exercised within a reasonable time. This Court in connection with other statutory provisions,in the case of State of Gujarat v. Patil Raghav Natha and in the case of Ram Chand v. Unionof India has impressed that where no time limit is prescribed for exercise of a power under a statute it does not mean that it can be exercised at any time; such power has to be exercised within a reasonable time. We are satisfied that in the facts and circumstances of the present case, the suo motu power under section 84-C of the Act was not exercised by the Mamlatdar within a reasonable time. Accordingly the appeal is allowed. The impugned orders are set aside.No costs. "

Here also, in the facts and circumstances of the case before hand, as per my view, the suo motu power under section 84-C of the Act has not been exercised by the authorities below within reasonable time and, on that ground alone, this petition is required to be allowed and the orders impugned herein are required to be quashed and set aside. Before parting with the judgment, it is

necessary to be noted that the possession of the land in question has remained with the petitioner all through from the date of the sale deed. Meanwhile, as submitted by Mr. Barot, the petitioner has invested huge amount for development of the land and the land is the source of livelihood of the petitioner and in this view of the matter also, I am of the opinion that the orders passed by the Deputy Collector as well as the tribunal are required to be quashed and set aside.

In the result, this petition is allowed. The order dated 27th July, 1998 passed by the Deputy Collector as well as the order dated 12th January, 2000 passed by the tribunal are quashed and set aside. Rule is made absolute accordingly with no order as to costs.

6.10.2000. (H.K.Rathod,J.)

Vyas